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IN THE SUPREME COURT  
STATE OF FLORIDA

**FILED**  
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CLERK, SUPREME COURT

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RAFFIELD FISHERIES, INC.  
and EUGENE RAFFIELD,

Petitioners,

CASE NO: 71,677

vs.

STATE OF FLORIDA,

Respondent. /

\_\_\_\_\_

AMICUS CURIAE BRIEF

SOUTHEASTERN FISHERIES  
ASSOCIATION, INC.  
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STATEMENT OF THE CASE AND THE FACTS

On June 25, 1986, Raffield Fisheries received a permit from the U.S. Department of Commerce for the purpose of catching red drum by purse seine in the Exclusive Economic Zone (EEZ). The catch was to occur off the coast of Louisiana. This permit was one of a number issued by the National Oceanographic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce, under an emergency rule that imposed a total quota of 1 million pounds of red drum to be caught in The EEZ.

The EEZ is the area between the territorial waters of the states and the 200 mile limit claimed by the United States. These "Federal Waters", as they are commonly referred to by both government agencies and the industry alike, are within a zone created by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801, et. seq.

Pursuant to the permit issued, Raffield Fisheries caught many thousands of pounds of red drum in the EEZ off the coast of Louisiana. All these fish in question were caught by purse seine, several hundred miles from

the territory of the State of Florida. The permit issued by the U.S. Dept. of Commerce specifically states the method of catch: "Directed net fishery."

The fish were landed in Venice, Louisiana and trucked to Port St. Joe, Florida where Marine Patrol Officers charged the Petitioners with possession of food fish taken by purse seine in violation of Section 370.08(3) F.S.

The case was heard in the County Court of Gulf County. By order, Judge Taunton held Section 370.08(3) to be unconstitutional and dismissed all charges. In his decision, Judge Taunton held that because the fish were legally caught, pursuant to a permit issued by the U.S. Department of Commerce, the State of Florida could not make what was legal and lawful under Federal law illegal. Judge Taunton also questioned whether Florida's legitimate interest allowed the purse seine law to be applied where it would only work to keep a lawfully captured fish from being used in commerce within the State of Florida.

Furthermore, Judge Taunton found the statute to be fatally defective since the law makes no distinction between

food fish in which Florida has a legitimate interest and those fish in which it does not.

The State appealed Judge Taunton's decision to the District Court of Appeal, First District of Florida. On October 20, 1987, the court issued its decision, reversing Judge Taunton. Rehearing was denied on December 7, 1987.

The District Court of Appeal found that there was no federal preemption of the State's purse seine law. They also found that Section 370.08(3) F.S. did not violate the Federal Commerce Clause as the purpose of the law was to "protect the state's supply of food fish." Furthermore, the District Court of Appeal did not find the statute to be void for vagueness as the possession of purse seined fish was clearly forbidden.

Finally, the court below saw no equal protection problems in the case at bar, even though the fish were legally caught.

## SUMMARY OF ARGUMENT

The case at bar is of utmost importance to Southeastern Fisheries Association, Inc. in that it raises issues which affect the future economic viability of the entire fishery industry of the State of Florida.

Southeastern Fisheries Association (SFA) is a non-profit corporation organized under the laws of the state of Florida and headquartered in Tallahassee, Florida, which brings this amicus curiae brief on the behalf of its members. SFA is the largest commercial fisheries trade association in the southeastern United States, with more than 400 members from all sectors of the commercial fishing industry from North Carolina to Texas. SFA represents vessel owners, processors, and seafood restaurants.

SFA member companies have been responsible for harvesting and processing about 90 percent of the commercially-purse seine caught food fish in the Gulf of Mexico. Such members operate boats equipped with purse seine nets which fish in waters under Federal jurisdiction and other state waters which allow purse seining. Further, distributor and dealer

members of SFA purchase and sell substantial quantities of purse seined caught food fish. Florida Statute Section 370.08(3) is of extreme importance to SFA in that it forbids any person from catching food fish by purse seine and forbids any person from processing, for sale, any fish so caught.



**Section 370.08(3) F.S. is of great importance to the entire fishery industry of the state of Florida as it adversely affects the economic viability of the industry.**

Section 370.08(3) F.S. states that, "no person may take food fish within or without the waters of this state with a purse seine, purse gill net, or other net using rings or other devices on the lead or the lead line thereof...or have any food fish so taken in his possession for sale or shipment."

This includes food fish caught by purse seine anywhere in the world that is brought to the state of Florida to be processed for sale. It could be interpreted as also including any supermarket which sells this product canned anywhere in the world but which was caught by purse seining. This fact immediately and adversely affects the livelihood of SFA's members and the economic viability of their operations.

Many fish caught in the international waters surrounding Florida are caught by purse seine nets, and then brought into Florida for processing. Particular species of fish, like the anchovy, salmon, sardine, herring, butterfish,

skipjack, bonita, and bluefish are caught almost exclusively through purse seining. These species of fish are usually found in the deeper waters of the Gulf of Mexico and the South Atlantic Ocean. The only economical means of harvesting these fish are through purse seining. A rule such as Section 370.08(3) F.S., could extremely damage, if not destroy the food fish processing business in Florida should all species of fish which are caught through purse seining be denied entry into the Florida plants.

Some of the SFA members have boats that operate out of ports in neighboring states from Texas to North Carolina. Purse Seining is allowed by law in Mississippi. Alabama and Louisiana allow purse seined food fish to come into their state in order to be processed, so long as the food fish is caught outside the state waters. SFA member processors have salmon flown in from Washington, Oregon and Alaska. They then process the food fish here in Florida. Section 370.08(3) F.S. makes it unlawful for SFA member boats to work even under legal permits issued by the other states. It also makes it unlawful for processors to obtain legally caught food fish for production in Florida.

From the interpretation accepted by the District Court of Appeals, Section 370.08(3) F.S. also prohibits purse seining for food fish in the federal EEZ. It is the position of SFA and the understanding of its members that when the Congress of the United States established the federal fisheries zone, now the EEZ, in 1976; it was for the development of the fishery resources by American fishermen to displace all the foreign fishing that had been occurring off the shores for the past 100 years. Congress stated at the inception of the establishment of the zone, that the purpose was to assure a steady supply of seafood products to the consumers of the United States. 16 USC 1801.

The case at bar puts the members of SFA in a position of not knowing whether they are in violation of the Section 370.08(3) F.S. or whether they are subject to criminal charges if they buy fish that were caught legally in other places with a purse seine. Such popular fishery products as Alaskan Salmon, Maine Sardines, and Peruvian Anchovies are all primarily caught by purse seining. In addition, cod is caught primarily by purse seining methods. Cod is the food fish used in frozen fillets sold in retail stores throughout the state of Florida. It is also the food fish used in many restaurants,

as well as for sandwiches sold by fast food chains all over the state.

To deny the seafood industry of the State of Florida access to these imported products could completely destroy the economic well-being of the seafood processors and restaurants. Since approximately 80% of all seafood consumed by Florida residents is product of purse seining, denial of these product into the State for the purpose of sale puts SFA members, as well as the entire seafood industry, at a sufficient economic disadvantage over other processing and producing states.

**Section 370.08(3) F.S. is arbitrary in its enforcement and denies the seafood industry the use of federally accepted, and necessary means of catching, processing, and selling all species of fish categorized as "food fish."**

Because of the broad nature of Section 370.08(3) F.S., enforcement of such a law is inevitably arbitrary. The state of Florida does not have the manpower available to investigate every processing plant, retail store, or restaurant to determine whether the products they are selling were caught by purse seining methods legal in other parts of the world. In fact, if the statute in question were enforced without arbitration, the result would be a total economic chaos in the industry, as well as the retail stores and restaurants of Florida.

Indeed, Florida does have the right and obligation to protect its vital resources, and fish is certainly one of those resources; however, the statute goes beyond the state of Florida's scope of interest when it forbids possession of all purse seined fish.

Certain types of small food fish, such as the anchovy, and the sardine can only be taken by purse seine nets.

If the statute was enforced as it is written, all cans of sardines would have to be taken off the market. Pizzas with anchovies could not be sold in Florida. Fast food chains could not offer fish sandwiches on their menus because cod is caught by purse seine nets in the North Atlantic.

The aforementioned fish, as well as other such species, are available in supermarkets, and retail stores throughout the state. A large number of restaurants sell purse seined products to customers throughout the State of Florida. In addition, Florida has a large number of processing plants, and certainly is one of the largest consumers of these products. Should food fish which are caught by purse seining be denied entry into the state of Florida, not only would the processors be adversely affected, but so would every person who enjoys these fish products while either visiting or residing in this state.

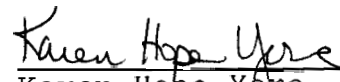
The scope of the statute is so broad that enforcement certainly could be accomplished in no other way, except by an arbitrary execution.

Conclusion

Because of the reasons outlined above, Southeastern Fisheries Association, Inc. respectfully comes before the Court in this case, and requests that Court consider the issues raised in this Amicus Curiae Brief when making a decision on the case at bar.

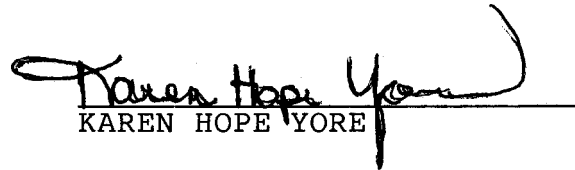
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Amicus Curiae Brief has been furnished by U.S. Mail to Bradford L. Thomas, Assistant Attorney General, The Capitol, Tallahassee, FL 32399-1050, to Charles R. McCoy, Assistant General Counsel, Department of Natural Resources, 3900 Commonwealth Boulevard, Suite 1003, Douglas Building, Tallahassee, FL 32399, and to Kenneth G. Oertel, Oertel & Hoffman, P.A., Attorney for Petitioner, P.O. Box 6507, Tallahassee, FL 32314-6507 on this 15th day of April, 1988

  
KAREN HOPE YORE